

The Art of Political Manipulation and the ADA

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When the Americans with Disabilities Act (ADA) was introduced into Congress in April 1988 by Senator Tom Harkin (Democrat, Iowa) it was hailed as a new civil rights act for Americans with disabilities. The ADA, however, was not enacted into law that year. Most substantial civil rights acts do take more than one session of Congress to be enacted so this turn of events was not unexpected.

On May 9, 1989, Senator Harkin along with Senators Edward Kennedy (Democrat, Massachusetts), Dave Durenberger (Republican, Minnesota), and thirty one other senators reintroduced the ADA into Congress. On the same day an identical version of the ADA was introduced into the House by Representatives Tony Coelho (Democrat, California), Hamilton Fish (Republican, New York), Major Owens (Democrat, New York), Silvio Conte (Republican, Massachusetts), and ninety one other Representatives. On June 22, 1989, Attorney General Richard Thornburgh, in his testimony before the Senate Committee on Labor and Human Resources, committed the Bush Administration to support of the ADA. (Bowe, 1990) In August 1989 it was marked up into the version which was passed by the Senate in September.

This 1989 version of the ADA was a substantial revision of the 1988 one. Many groups again endorsed the ADA of 1989, but this time as the best thing that could get through Congress. There were substantial changes and many persons strongly opposed the 1989 version. The opposition was based upon the following points.

(1) Persons with disabilities are the only discriminated against group who, according to the legislation, must first prove that they are qualified (for the job, service, or benefit) before the allegation of discrimination is considered. The 1989 ADA (unlike the 1988 version) continues this discriminatory practice. (2) The "small employer" provision exempts firms with less than 15 employees (raised to 25 employees for the first two years of effectiveness) from the ADA. Projections of the future job market indicated that the largest percentage of jobs will be in firms with less than 15 employees.

(3) Air travel was completely excluded on the basis that existing legislation was adequate, but that claim was and still is hotly disputed.

(4) Housing was also excluded for the same reason, that it was adequately covered under the Fair Housing Amendments. While this legislation was an improvement over earlier times, it was still described as inadequate.

(5) The 1988 communications section prohibiting discrimination was dropped in the 1989 version of the ADA and one dealing with relay systems was substituted.

(6) The Secretary of Transportation could and still can put off for 20 years (in addition to the statutory 3 years or 23 years in all) making "key stations" accessible. Many advocates point out that an accessible train is not worth much if a person with a disability can neither get on nor off.

For these reasons (and others) persons within the disability community opposed the 1989 version of the ADA, but in a very quiet way. At the same time many advocates and advocacy groups supported it. After months of hearings, intense lobbying, public demonstration, and considerable discussion, the ADA passed the House on May 22, 1990. After negotiations conducted during meetings of the conference committee over the differences in the two versions (House and Senate), both Houses of Congress passed the ADA and sent it to the White House for the President's signature. George Bush - who opposed some of the earlier provisions - announced that he would not veto it. (Holmes, 1990) On July 26, 1990, the ADA was signed into law during a ceremony on the White House lawn attended by many of the persons who worked long and hard for its passage.

The passage of the ADA was no small feat. The opposition to it (outside of the disability community) was stated in terms of cost and, because of the rights guaranteed to various groups, in terms of giving protections to drug users, AIDS carriers, and child molesters. These arguments were hard ones to counter in any political climate.

The American Public Transit Association and the U.S. Chambers of Commerce were typical examples of the strong groups which set out to defeat or to gut the bill. However, there was a significant lobby working for its passage during the years 1988 to 1990. There were a number of demonstrations, letters to editors and to Members of Congress, some media discussions of the bill, speeches, pronouncements, and all the paraphernalia which goes with big time legislation. The advocates for the bill tried to keep it very low key in the media because they feared that media coverage would attract too much attention which would turn to unbeatable opposition. Shapiro (1993) described it as a stealth strategy, but it was discussed in the media even if in a low key.

In contrast, Title V of the Rehabilitation Act of 1973 (a limited civil rights act) practically slithered into law with no notice at all. The opposition to the Rehabilitation Act was not to the anti-discrimination provisions, but to the appropriation figures. With the exception of the Education of All Handicapped Children Act, subsequent pieces of disability legislation in the 1970s and early 1980s either failed to pass or were quite narrow. The disability rights movement only achieved small successes.

The passage of the ADA can be viewed as an indication of the political maturing of the disability rights forces on the federal level. An examination of its passage is important. We need to understand the process in order to use it again and to protect what has been achieved. Many persons (e.g., Schriener, 1990) called for the development of such an understanding.

A number of writers (including Schattschneider, 1960; Kingdon, 1984; Riker, 1986) discuss the ways of enacting proposed policy into law and Bykerk (1988-89) illustrates how policy can be prevented from becoming law. The outline put forth by Riker (1986) is the most useful one. Following his discussion, the political, policy making process can be manipulated by controlling the agenda, the alternatives, and the dimensions of the debate. The passage of the ADA illustrates how these three were controlled or at least managed in order to bring about a successful effort.

The Agenda

Unless an issue is "on the agenda" - that is, discussed and debated in the media and by political actors - no attention will be paid to it except by the specialists and those people immediately concerned with it. Environmental issues did not suddenly appear. Rachel Carson's Silent Spring put environmental issues on the national agenda. Issues involving the civil rights of African-Americans did not suddenly spring forth in the 1960s. The events at Selma, Montgomery, and elsewhere put them on the national agenda.

Disability rights issues had also been around for a long, long time, but a series of events brought them onto the national agenda. In January 1988 the National Council on Disability published *On the Threshold of Independence*. This publication provided a written resource for persons who wanted more information about disability rights and a direction in which to go. During the Summer of 1988 Justin Dart held forums around the country generating considerable local attention and information for Congress. C-SPAN televised the Congressional hearings on the ADA and they sparked interest inside and outside of the disability community. The Leadership Conference on Civil Rights became interested in the ADA and assisted in the process. The events at Gallaudet University in March of 1988 (forcing a new hearing president to resign and be replaced by a Deaf president) also brought the issues to the attention of the media. The brilliant strategy of having people with disabilities keep daily diaries of discrimination, to recite them at committee hearings, and to mail them to Members of Congress was very influential. During the Fall of 1989 and the Spring of 1990 some 350,000 postcards were sent to Members of Congress favoring the passage of the ADA. Such tactics and actions all contributed to placing the ADA on the agenda.

Discussions of the ADA appeared in publications of the Society for Disability Studies, in the

National Association of the Deaf's Broadcaster, the Word from Washington published by UCP, the DREDF Newsletter, in publications from the President's Committee on the Employment of Persons with Disabilities, the American Federation of the Blind, the Association on Handicapped Student Service Programs in Post-Secondary Education (now AHEAD), the Paralyzed Veterans of America, and the Disability Rag (now the Ragged Edge). However, these are groups naturally interested in disability rights even though they are quite diverse in terms of interests, disabilities, and geography.

Strong evidence that the ADA was on the agenda is that it was also discussed in the Boston Globe, the Boston Herald, the New York Times, the Dallas Morning News, and in a number of other newspapers. It was discussed in more specialized publications like the monthly newspaper of the American Public Health Association and the monthly newspaper of the American Society for Public Administration. In addition there were programs about the ADA on local and national TV news and on National Public Radio.

The final realization by the author that the topic of disability rights was on the national agenda came the day after the House passed the ADA. At 37,000 feet in the air on an American Airlines flight returning to Boston from Dallas there was a CNN news video describing the passage and the details of the ADA. The disability movement had arrived.

The Alternatives

Being on the agenda, however, can lead to quick defeat. The next step is to manipulate the alternatives so as to present the issue in a way which will result in favorable action. Opposition to nuclear arms did not suddenly appear with the Nuclear Freeze movement. The Freeze advocates were able to change the alternative under discussion from victory in World War III to nuclear winter. At that point people were quite ready to limit nuclear weapons. In a similar way, rewriting the 1988 version of the ADA into one acceptable to more parties changed the alternatives although it might be seen as changing the dimensions of the debate (the third way to manipulate the political process) which is discussed below.

A more important changing of the alternatives was done (maybe unwittingly) by Louis Harris and Associates. During the Spring and Summer of 1988, the Harris organization published reports on the potential political impact of the disability community. It detailed the extent of concern with disability issues and the number of voters who were disabled. It presented evidence that persons with disabilities were more politically active than non-disabled persons, a point now debated. After the 1988 Presidential election the Harris organization published evidence that people with disabilities voted for George Bush because he put those 33 words (that he would help bring people with disabilities into the mainstream) in his acceptance speech to the Republican national convention and because his campaign organization reached out to them.

Members of Congress realized that opposing the ADA was no longer just irritating paid lobbyists. The alternative to supporting the ADA was running the risk of offending a group which could be the balance of power in a Presidential election - and almost every Member of Congress wants to be President or at least a major player in a Presidential election. As Nancy Fulco of the U.S. Chambers of Commerce was quoted (Bowe, 1990: 99) as saying: "No politician can vote against this bill and survive."

The Dimensions

Since humans are finite beings they can not keep all possible dimensions of a problem in their grasp so whoever controls the dimensions of the debate can control the debate. In the 1988 Presidential election Michael Dukakis wanted to focus on fiscal effectiveness and experience, but those are boring (although important) dimensions of leadership. George Bush turned to more exciting dimensions: racial and economic fear. In a similar way for the ADA the key was to focus upon rights, not cost as the opponents were doing. It was rights which interested the advocates and they transmitted their interest to Members of Congress.

The daily diaries of discrimination mentioned earlier were a great aid in focusing the debate upon rights. These naked documentaries brought home the point in a way that little else could. Once this objective was achieved, some favorable outcome was all but certain. The March 1990 rally by ADAPT and others kept it focused upon rights. The Coalition for Citizens with Disabilities, a peak organization begun

by Paul Marchand of the Associations for Retarded Citizens, made certain that rights came up in all the discussions of the bill.

However, opponents of the ADA continued to base their arguments upon cost. Supporters of the ADA countered that not enough was known about the problems in terms of cost. They were given another way to control this dimension of the debate in a publication by the General Accounting Office. (U.S., General Accounting Office, 1990) The GAO reviewed the literature from 1975 to 1989 identifying pertinent reports on the costs which are associated with the ADA. In addition they contacted 20 private industry groups (including the American Bus Association, the American Institute of Architects, and the U.S. Chamber of Commerce), 12 disability interest groups (including the American Federation of the Blind, the Disability Rights Education and Defense Fund, the Paralyzed Veterans of America, and United Cerebral Palsy), and 13 government agencies (including the Architectural and Transportation Barriers Compliance Board, the Departments of Commerce, Housing and Urban Development, and Transportation, and the Small Business Administration) asking if they had carried out or had knowledge of unpublished cost studies.

The GAO came up with a grand total of 12 reports. However, in their words, the reports were "only marginally useful." Again in their words: "In addition to being outdated, the reports apply only to the cost of avoiding or removing selected barriers...in selected situations. In some cases, the studies use questionable or unexplained methodologies." Thus the cost argument was never on sound ground. (U.S., General Accounting Office, 1990) Nevertheless, it had to be faced.

The manner in which it was dealt with was to change the dimensions of the debate to rights instead of costs. As a result of doing this change the proponents of the ADA achieved success. As a result, the ADA is a civil rights bill for people with disabilities.

Controlling the agenda, the alternatives, and the dimensions of the debate brought victory to the supporters of the ADA in 1990. The battle involving rights, however, is never over. At the start of the 21st century people with disabilities are witnessing an attempt to gut the ADA. The disability community must continue to control (or at least influence) the agenda, the alternatives, and the dimensions of the debate on implementing the ADA and the way it is interpreted in court challenges. It is a never ending battle.

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